

Chapter 13 Discharge Requirements 11 U.S.C. § 1328

BAPCPA imposes requirements for discharge in chapter 13 cases, relating to domestic support obligations, prior discharges, and potential felony charges.

Under 11 U.S.C. § 1328(a), if debtor owes domestic support obligations, the debtor must certify that all payments due have been paid before the court can grant a discharge.¹ The confirmation order may direct that certification, if necessary, must be filed by the debtor prior to discharge, and that responsibility for tracking this item is the duty of the trustee and debtor's attorney.

Under 11 U.S.C. § 1328(f)(1) and (2), a discharge should not be entered for a debtor who has received a discharge in a chapter 7, 11, or 12 within the last 4 years or a discharge in chapter 13 in the last 2 years. Courts that check for prior discharges may:

- consider whether to check for prior discharges at initial case filing or at some other point after the case is filed; or
- have the docket sheet indicate that the debtor is not eligible for discharge; or
- use the U.S. Party Case Index system to check for prior discharges.

The clerk's office may want to consider amending their boilerplate language for the confirmation plan or order to state that debtor is not eligible for discharge if the requirements of 11 U.S.C. § 1328 (f)(1) or (2) apply to the debtor's case.

Pursuant to 11 U.S.C. § 1328(h), if debtor has elected to exempt property that exceeds \$125,000 in the aggregate AND the debtor may be found guilty of a felony, or become liable for specified debts, the discharge should be delayed until after notice and hearing.

- It is the responsibility of the trustee or party in interest to make a motion to delay discharge because of reasonable belief that debtor has a pending proceeding or may become liable for certain debts.
- If such motion is filed, the clerk's office would notice the hearing on the motion.
- Section 1328(h) is effective for cases filed on or after October 17, 2005.

Note - 11 U.S.C. § 1324(b): Confirmation hearings may be held not earlier than 20 days and not later than 45 days after the date of the §341 meeting, unless court determines it is in the best interests of creditors to hold hearing earlier. Court will need to change the § 341 notice to select dates within these time periods.

¹ The debtor is also required to pay all domestic support obligations due after the filing of a petition in order for the plan to be confirmed. 11 U.S.C. §1325(a)(8).